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**LETTER OPINION  
95-L-291**

June 21, 1995

Ms. Jeanne McLean Behrens  
Bottineau County State's Attorney  
314 West 5th Street  
Bottineau, ND 58318

Dear Ms. Behrens:

Thank you for your letter of June 9, 1995, regarding an appeal of a special assessment for the Stone Creek Channel Improvement Project, Bottineau County Water Resource District. You asked whether the State Engineer, by State Engineer's Order No. 84-3, determined that certain land benefited by a special assessment project must be assessed for the project.

Bottineau County Water Resource District established a special assessment project and assessed land owned by Helmer Miller for the project. Mr. Miller appealed the decision to the State Engineer claiming that his land received no benefit from the project pursuant to N.D.C.C. ? 61-16.1-23. Several other individuals also appealed the district's assessments. The State Engineer determined that Mr. Miller's appeal was valid and, upon review, concluded that certain land did not receive a benefit from the project and should not be assessed. The land identified by the State Engineer as not receiving a benefit did not include Mr. Miller's land. Although the State Engineer did not specifically state that Mr. Miller's land did receive a benefit, by listing all lands that did not benefit, the implication is, since Mr. Miller's land was not so listed, that it did receive a benefit from the project.

Although the State Engineer did not specifically state that because Mr. Miller's land received a benefit it must be assessed, N.D.C.C. ? 61-16.1-15 requires the district to assess land benefited by a project. That section provides:

**61-16.1-15. Financing project through revenue bonds, general taxes, or special assessments - Apportionment of benefits.** A water resource board shall have the authority, either upon request or by its own motion, to acquire needed interest in

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property and provide for the cost of construction, alteration, repair, operation, and maintenance of a project through issuance of improvement warrants or with funds raised by special assessments, general tax levy, issuance of revenue bonds, or by a combination of general ad valorem tax, special assessments, and revenue bonds. Whenever a water resource board decides to acquire property or interests in property to construct, operate, alter, repair, or maintain a project with funds raised in whole or in part through special assessments, such assessments shall be apportioned to and spread upon lands or premises benefited by the project in proportion to and in accordance with benefits accruing thereto. The board shall assess the preparation of the cost of the project, or the part of the cost to be financed with funds raised through levy and collection of special assessments which any lot, piece, or parcel of land shall bear in proportion to the benefits accruing thereto and any county, city, or township which is benefited thereby. In determining assessments the water resource board shall carry out to the maximum extent possible the water management policy of this chapter that upstream landowners must share with downstream landowners the responsibility to provide for the proper management of surface waters.

N.D.C.C. ? 61-16.1-15 (emphasis supplied). Consequently, although not ordered by the State Engineer, because Mr. Miller's land is benefited by the project the board is required to assess his land.

Sincerely,

Heidi Heitkamp  
ATTORNEY GENERAL

jak/mh